

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ADVANCED FRICTION MATERIALS  
COMPANY,

UNPUBLISHED  
July 20, 2001

Plaintiff/Counter-Defendant/-  
Appellee/Cross-Appellant,

v

STERLING-DETROIT COMPANY,

No. 216543  
Oakland Circuit Court  
LC No. 95-510130-CK

Defendant/Counter-Plaintiff/-  
Appellant/Cross-Appellee.

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Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I agree with the majority insofar as it holds that the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict for the reasons set forth by the majority. I respectfully dissent from the majority's decision to affirm the trial court's order granting a new trial.

I would hold that the trial court abused its discretion in granting a new trial because I do not believe that the jury's verdict is inconsistent or illogical. The jury was faced with two different breach of contract claims by each party. The jury essentially found, on the special verdict form, that neither party proved its breach of contract claim. There is nothing inherently illogical or inconsistent about such a finding. The terms of the contracts in this case were rather complex and were changed in the course of dealings between the parties. The jury could have concluded, based on the evidence before it, that neither party had proven the terms of its contract with the other or that either party had breached the terms of the contracts. Further, the jury could have concluded that defendant breached the terms of its contract with plaintiff by supplying defective parts, but that under the terms of the contract, plaintiff's remedy was limited to replacement of any of the defective parts. Additionally, the mere fact that plaintiff stipulated to owing money under two contracts does not lead to an automatic finding of liability. It does not necessarily follow that a party has breached a contract merely because it owes money under that contract.

Moreover, the trial court's reason for granting the new trial was improper as a matter of law. The trial court gave the following explanation for its ruling:

The jury instructions stated that if you find that a party committed the initial breach of a contract, you may find that that party is not entitled to recover payment on the contract after the breach. And I think that's the key instruction that was given to the jurors and where they kind of hung their hat. Then we go to the Jury Form here which provides—and the Jury Form was agreed upon by both counsel, which was an affirmative finding first that did Sterling-Detroit Company breach any contract or any express or implied warranty with AFM. The answer was no. And I think what the jury needed both on that form and on did AFM breach any of the following contracts by failing to pay Sterling-Detroit the invoice amount was a second question. And that would be where the jury could have answered yes to that question and then been asked a question as to whether or not though they made the initial breach which would excuse payment on the contract. . . . I think that the jury wanted to come up with a draw. They wanted to achieve something that the form did not permit them to achieve and that is that probably they found that both of the parties were somehow in breach and therefore did not want to award any money. But I am putting my mind—myself in the minds of the jurors which I am not allowed to do. I am just looking at the form. And I think that it's totally inconsistent based on the form and on their responses that no money was owed to either party. They wanted to achieve a draw in this case. They were not able to achieve a draw because the Jury Form did not provide the questions that they . . . needed in order to do that. They wanted to achieve a result that couldn't be achieved in law and I felt the jury therefore came up with an inconsistent verdict.

As our Supreme Court has held, a trial court must make every effort to reconcile seemingly inconsistent verdicts. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000), quoting *Lagalo v Allied Corp*, 457 Mich 278, 282; 577 NW2d 462 (1998). If there is an interpretation of the evidence providing a logical explanation for the jury's findings, then the verdict is not inconsistent and is to be upheld. *Bean, supra* at 31; *Lagalo, supra* at 286; *Granger v Fruehauf Corp*, 429 Mich 1, 7; 412 NW2d 199 (1987). As has been stated, I believe that there is evidence that provides a logical explanation for the jury's verdict; that is, that the jury found that neither party proved its breach of contract claim. The trial court's reasons for ordering a new trial are improper in that the court speculated as to the jury's reasons for the verdict, did not account for the evidence adduced at trial, failed to defer to the jury's exclusive province as the finder of facts, and simply substituted its own view of the evidence for that of the jury. Further, the jury's verdict of no cause of action as to both parties regarding their breach of contract claims is not inconsistent as a matter of law; rather, it is a plausible finding from the evidence adduced at trial.

Consequently, I would find that the trial court abused its discretion in ordering a new trial. I would reverse the trial court's ruling in this regard and reinstate the jury's verdict.

/s/ Kathleen Jansen